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Parliamentary Control of the Bundeswehr

The Need for Legislative Reform

Timo Noetzel and Benjamin Schreer

The right of the German Bundestag to have the final say on decisions to deploy German armed forces abroad is currently subject to intense political and public debate. Two central challenges for German security and defense policy are fundamental to this debate. Firstly, deployment decisions of this kind increasingly are being predetermined at the international level—within the respective frameworks of NATO and the EU—to such an extent that in reality there is very little room left for parliament if it is to avoid seriously abrogating Germany's alliance responsibilities. Secondly, emerging security threats have led to closer integration of national security institutions and actors and this in turn requires an adaptation of structures of parliamentary control. How should parliament respond to these developments?

As the German military participation in the EUFOR RD Congo mission in 2006 showed, progress of military integration in Europe already has meant that the decision whether to participate in such operations is largely predetermined at the international level. The political reality now is that the right of the German legislature to decide whether German armed forces should be deployed abroad is increasingly being supplanted by a practice of executive-level negotiations at the international level. This trend could be strengthened by rapid-response scenarios currently under discussion: operations by the NATO Response Force (NRF) and the EU battle groups. For both of these, Germany has given firm promises of contingents that should be deployable within five to seven days. If the

German government is to meet its obligations to NATO and the EU, such deployments will demand a very fast decision-making process on the national level.

For that reason supporters of an amendment to the so called *Parlamentsbeteiligungsgesetz* (Parliamentary Participation Act) propose giving government a general mandate to deploy German contingents in NATO and EU rapid-response forces at the beginning of a legislative period; a right to recall forces would ensure that the Bundestag retained ultimate control of such operations they argue. Opponents of such a change argue that to date parliament has always managed to authorize deployments at short notice. Furthermore, they say, only under the current rules can it be made clear that the decision to deploy armed

forces is a decision of conscience for each individual Member of Parliament. Another general criticism is that changing the law in this area would further reduce the influence of parliament.

Contemporary Parliamentary Control

As well as future mechanisms of parliamentary control for expeditionary operations by the German armed forces, the debate over the parliamentary veto also touches on another central issue of German security and defense policy. This is the question of how parliament can properly exercise its control function as the German security architecture becomes increasingly integrated.

Complex transnational threats such as international terrorism call for a proactive German security and defense policy. Since 2001, with parliament's approval, a steadily increasing number of soldiers, police officers, and members of the German intelligence services have been deployed abroad in regular, but also covert and/or clandestine operations. For example, as well as regular military units, German Special Operations Forces (*Kommando Spezialkräfte*, or KSK) are operating in Afghanistan as part of Operation Enduring Freedom (OEF), while members of the Federal Intelligence Service (BND) and the Federal Office of Criminal Investigation (BKA) have interrogated suspected terrorists held in custody in the Middle East and the United States. BND operatives even conducted intelligence-gathering operations in Baghdad during the 2003 Iraq War.

These operations are symptomatic for the increasingly global activities of German security forces. Apart from regular armed forces, a growing number of personnel of other agencies and departments have been deployed abroad on behalf of government, mostly for secret or covert operations against terrorist organizations that provide asymmetric threat potentials. This pattern of operations requires a reform of the

German security architecture with the goal of meshing different state actors more closely together. But reform must not be restricted to government activities. Instead, greater thought must be put into ways of adapting the mechanisms of parliamentary control. Future approval and deployment procedures must be brought into line with the German government's changing foreign and security policy activities.

Weaknesses of Current Control Practice

Both supporters and opponents of a reform of the parliamentary right of veto will have to take into account the fact that failure to adapt parliament's control structures in recent years has resulted in an erosion of legislature's control powers with respect to expeditionary operations by German armed forces. One example of this can be found in the parliamentary control over OEF. When the mandate came up for renewal, government regularly applied for significantly larger troop contingents than it actually deployed, in this way giving itself greater room for maneuver for later decisions about which forces to deploy when and for what purpose. From an operational perspective this made sense, but its effect was to further weaken parliamentary control rights.

Parliamentary control of operations by special operations forces is also fraught with problems. To all practical purposes, operations by the KSK and the German navy's *Kampfschwimmer* (combat diver unit) are subject to only weak institutionalized parliamentary supervision. Parliamentary parties' spokesmen on the Bundestag defense committee are continuously informed about such operations, and when the OEF mandate was extended last year Minister of Defence Franz Josef Jung promised that he would also inform the parliamentary parties' spokesmen on the foreign affairs committee as well as the committee chairmen and their deputies both on the foreign affairs committee and

the defence committee. He further agreed to provide information in writing rather than merely verbally as had previously been the case. However, this seems to be a rather incremental change. Given that asymmetric threats provided by non-state actors are of increasing relevance and that in turn the political and military significance of special operations forces increases the question of a crisis-proof procedure for parliamentary control is even more important.

Finally, in relation to the deployment scenarios for the NRF and the EU battle groups it must be noted that the effectiveness of control mechanisms provided in law does not stand up to political reality. Whether or not the *Parlamentsbeteiligungsgesetz* is altered in the manner described, in practice it is difficult to imagine the Bundestag refusing to approve an operation, and still less to withdraw its approval afterwards. So if the Bundestag is to retain any meaningful kind of influence as the German armed forces become more closely integrated in multinational units, parliament will have to become involved in government decision-making processes at a much earlier stage.

The current debate also skirts round central questions concerning efforts to improve parliamentary control of the police and intelligence services in foreign operations. The existence of different deployment procedures for the various security forces is a clear sign that there is a need for institutional reform here. In recent years, police officers increasingly have been deployed abroad without any parliamentary control structures having been established for this purpose. This deficiency would become a problem if the Federal Police were to become a more central component of foreign missions than has been the case to date. And the experience so far with international stabilization operations speaks in favor of creating special units encompassing both police and military capacities, which could be increasingly deployed in the scope of a European 'Gendarmerie'. In any case

parliament will have to deal with the question of controlling Federal Police operations abroad.

Formal structures for parliamentary control of the intelligence services do already exist. However, in practice the so called *Parlamentarische Kontrollgremium* (PKG) is generally informed of politically sensitive BND operations too late or not at all. For example, the panel was told nothing about the BND's Baghdad operation, and members increasingly complain that they often feel better informed by the media than by representatives of the services. For that reason various calls have been made for this body to enhance its investigatory powers; for instance, the right to instigate criminal proceedings. It must be questioned, however, to what extent it would be sensible to expand the powers of this particular committee. Instead, it would be worth considering merging its control duties with the responsibilities of a new body proposed below.

Effects of Current Control Practice

The structures and procedures for parliamentary control of expeditionary operations by German armed forces have so far remained largely unaltered. Under current conditions, effective control is becoming increasingly difficult. As the case of Murat Kurnaz shows, investigating cases of possible executive misconduct is also becoming increasingly difficult, with the result that drawn-out debates about political responsibility for misconduct could become the rule rather than the exception. For lack of efficient control instruments the German Bundestag will be confronted more and more frequently with the question whether a particular case of suspected misconduct justifies setting up a parliamentary commission of inquiry. But commissions of inquiry are actually supposed to be parliament's last resort. Excessive use of this important control instrument would inevitably erode its effectiveness and would definitely do harm to involved security

organs to an extent not always proportionate to the respective possible misconduct. Furthermore, setting up a commission of inquiry inevitably impairs government's ability to act on foreign policy and security matters, clogs the parliamentary agenda, and ties up significant executive and legislative energies. Hence, it should be an instrument to be used in quite exceptional circumstances.

Recommendations

Germany is developing a global perspective on matters of foreign and security policy; it frequently is deploying regular military and other security forces abroad. So far, however, parliamentary control procedures have not been brought into line with this development. In the current debate over the parliamentary veto it is important to recognize that although the German armed forces can still be regarded as a *Parlament-sheer* (forces at the service of parliament) the political reality however is that its veto powers are in fact severely restricted.

One option for strengthening parliament's rights of control would be to set up a "deployment committee" in the form of a subcommittee made up of members of the foreign affairs, budget, home affairs, and defense committees. Equipped with sufficient resources and the right to apply sanction, this deployment committee would be charged with monitoring covert and/or clandestine activities and foreign operations by the military and other security forces. In this way the debates conducted in various Bundestag committees about deployment decisions and their consequences would be streamlined in a single forum. The committee regularly would have to receive information updates from executive organs concerning current NATO and EU analyses and planning. There also would be a duty of information concerning ongoing military operations by German security forces.

As well as strengthening parliament's control function, such a committee would

also beef up the government's ability to act on security matters. Especially in the field of covert and clandestine operations, political crises usually blow up after misconduct or when investigations are conducted after completion of an operation and the political responsibility is unclear. For that reason strengthening control structures by directly allocating political responsibility to a committee would also be in the interest of the involved executive organs. In this way, the structure proposed here could contribute to restoring parliament's ability to fully meet its duty of oversight. At the same time it would more directly legitimize the involved executive instruments in their conduct of operations and consequently strengthen them politically—and ultimately make Germany's diplomatic and military apparatus as a whole more crisis-proof.

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